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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Yasuyoshi Ueda

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EXAMINER

MAHYERA, TRISTAN J

ART UNIT

PAPER NUMBER

1615

MAIL DATE

DELIVERY MODE

04/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/501,669	Applicant(s) UEDA ET AL.	
	Examiner TRISTAN J. MAHYERA	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 and 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/16/2004, 10/21/2004, 03/31/2005, 11/13/2006,</u> | 6) <input type="checkbox"/> Other: _____ |
| <u>01/05/2007.</u> | |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group III, claims 15 and 16 in the reply filed on 3/26/2008 is acknowledged.

Status of Claims

Claims 1-20 are pending. Claims 1-14 and 17-20 are withdrawn pursuant to 37 CFR 1.142(b), as being drawn to the non-elected invention. Claims 15 and 16 are examined on the merits.

Priority

Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(a-d) is acknowledged.

Claim Rejections - 35 USC § 112 2nd Paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 15 is rejected because it depends from a

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withdrawn claim and thus does not particularly point out the invention. Applicant should remove "...according to Claim 1..." from line 2 of the claim.

Claim 15 recites the limitation "the oil/fat-containing food" in line 1 and 2. There is insufficient antecedent basis for this limitation in the claim because it depends from Claim 1, which was withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by SHAPIRA (US 6,156,351 see PTO-892).

Claim 15 is interpreted as a process that comprises one step. The step is adding ubiquinol and at least one of an emulsifier and oil/fat ingredient to any food, whether before or after processing/growing of the food.

SHAPIRA teaches chicken eggs with a mixture of antioxidants and poly-unsaturated fatty acids. The process involves feeding chickens a standard diet supplemented with antioxidants and fatty acids (see e.g. col 6 lines 38-57). A further process involves consuming the eggs. The antioxidants in the egg are edible (see claims 3 and 23) and preferably contain ubiquinol (see claims 9 and 29 lines 6 and 10); instant claim 15. The chickens are fed fat selected from canola oil, Trisun-80, olive oil,

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avocado oil, peanut oil, corn oil and soy oil (see e.g. claim 30) in unison with the antioxidants: instant claim 15. The standard feed to which the supplements are added are grain based and selected from mil, barley, rye oat, wheat, rice and corn based food mixtures (see e.g. col 6 lines 58-61).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over SHAPIRA in view of YAJIMA et al. (US 2005/0069996 see PTO-892).

SHIPRA teaches chicken eggs with a mixture of antioxidants, specifically ubiquinol and poly-unsaturated fatty acids, as described above.

SHAPIRA does not explicitly teach using ubiquinol that has a purity in excess of 0.01%.

YAJIMA teaches a process for producing reduced coenzyme Q10 (ubiquinol) from microbial cells by fermentation. Tables 1-3 show the mole % of reduced coenzyme Q10 (ubiquinol) and it ranges from about 70 % to about 97%, which is far in excess of the 0.01% purity required by claim 16. YAJIMA further teaches that this form of reduced coenzyme Q10 is edible and can be used for in oral compositions (see e.g. p[0012]) and has excellent antioxidant properties (see e.g. p[0013]).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use a high purity or higher than 0.01% ubiquinol in combination with an oil/fat for addition to food or feed, as taught by SHAPIRA in view of YAJIMA. One of ordinary skill in the art at the time the invention was made would have been motivated to combine these elements into a single composition because of the beneficial effects of obtaining a pure form of ubiquinol, an antioxidant, as taught by YAJIMA. Absent any evidence to the contrary, and based upon the teachings of the

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prior art, there would have been a reasonable expectation of success in practicing the instantly claimed invention.

Conclusion

No Claims allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TRISTAN J. MAHYERA whose telephone number is 571-270-1562. The examiner can normally be reached on Monday through Thursday 9am-7pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL P. WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tristan J Mahyera/
Examiner, Art Unit 1615

/MP WOODWARD/
Supervisory Patent Examiner, Art Unit 1615